IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1183 of 2007

Ellumalai .. Petitioner
(TPDA.No.5177)

Vs.

1. The State of Tamil Nadu
rep. by its Secretary to Government
Prohibition and Excise XII Department
Fort St.George, Chennai-9.

2. The District Magistrate
and District Collector
Tiruvannamalai District
Tiruvannamalai. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein to directing the respondents to produce the body of the petitioner Ellumalai, Son of Govindaraj Naicker who is detained in the Central Prison, Vellore before this Hon'ble Court and pass an order to call for the records of detention order imposed on the petitioner in detention order D.O.30/2007 dated 5.7.2007 passed by the second respondent and set aside the same and set the detenu at liberty.

For Petitioner : Mr.L.Poompavai
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

Challenging the order of detention dated 5.7.2007 made in D.O.No.30/2007-C2, passed by the second respondent branding the

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petitioner as a 'Goonda' under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), the petitioner, who is now confined in Central Prison, Vellore, has filed this Habeas Corpus Petition to set aside the order of detention and directing the respondents to produce him before this Court and set him at liberty.

2. The ground case based on which the impugned order of detention has been passed is that on 15.4.2007 at about 1800 hours, when one Raghupathi, the complainant was going to Bazar by bicycle, the detenu waylaid and pulled his shirt, took out a knife and snatched Rs.300/- from the shirt pocket of the complainant. When the complainant shouted for rescue, the public tried to catch him, but the detenu threw soda bottles and threatened them by showing pen knife, and taking advantage of the situation, the detenu escaped. Based on the complaint given by the complainant, a case in Crime No.221 of 2007 has been registered on the file of for offences punishable under Sections 341, 294(b), 392 and 506(2) I.P.C. and the detenu was arrested and sent for judicial remand.

3. Taking into consideration the above said ground case as well as twenty eight adverse cases, which are for the offences punishable under Sections 457(ii), 380 read with 75, 380, 379 read with 75 IPC, the second respondent/detaining authority having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The learned counsel for the petitioner placing reliance on the decision of the Apex Court in DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446], contends that the adverse cases relate to the offences punishable under Sections 457(ii), 380 read with 75, 380, 379 read with 75 IPC, and therefore, the solitary instance of robbery mentioned in the ground case is not relevant for sustaining the order of detention and hence, the impugned order of detention suffers on the ground of non-application of mind on the part of the detaining authority.

5. Mr.N.R.Elango, learned Additional Public Prosecutor supporting the order of detention contends that the detenu is habitually committing crime and has also acted in a manner prejudicial to the maintenance of public order and his detention is justified.

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6. We have perused the entire materials placed before us and heard the submissions of both sides.

7. With regard to the submission that the detenu is habitually committing crime, a reference to the decision of the Apex Court in *R. Kalavathi v. State of T.N.,(2006) 6 SCC 14* would be relevant:

"10. Habitual: the meaning of the words "habit" and "habitual" as given in *Advanced Law Lexicon* , (3rd Edn.) by P. Ramanatha Aiyar is:

> " *Habit* .—Settled tendency or practice, mental constitution. The word 'habit' implies a tendency or capacity resulting from the frequent repetition of the same acts. The words by ' *habit* ' and ' *habitually* ' imply frequent practice or use."

> " *Habitual* .—Constant; customary; addicted to a specified habit."

11. This Court in *Vijay Narain Singh* v. *State of Bihar, 1984 (3) SCC 14* considered the question of a habitual criminal and in para 31 the expression "habitually" was explained as follows:

> "The expression 'habitually' means 'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit."

The expression "habitual" would mean repeatedly or persistently and implies a thread of continuity stringing together similar repeated acts. An isolated default of rent would not mean that the tenant was a habitual defaulter. (See *Vijay Amba Das Diware* v. *Balkrishna Waman Dande, 2000 (4) SCC 126*)

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12. The expression "habit" or "habitual" has not been defined under the Gujarat Prevention of Anti-Social Activities Act, 1985. The word "habitually" does not refer to the frequency of the occasions but to the invariability of a practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such cases, which lead to a reasonable conclusion that the person is a habitual criminal. The word "habitually" means "usually" and "generally". Almost similar meaning is assigned to the word "habit" in *Aiyar's Judicial Dictionary* , 10th Edn., at p.485. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. (See *Mustakmiya Jabbarmiya Shaikh* v. *M.M. Mehta, 1995 (3) SCC 237*).

13. The expression "habitually" is very significant. A person is said to be a habitual criminal who by force of habit or inward disposition is accustomed to commit crimes. It implies commission of such crimes repeatedly or persistently and prima facie there should be continuity in the commission of those offences. (See *Ayub* v. *S.N. Sinha, 1990 (4) SCC 552*)

14. From one single transaction though consisting of several acts, a habit cannot be attributed to a person."

8. That apart, the Apex Court in DARPAN KUMAR SHARMA @ DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU, referred supra, held as follows:-

"... Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected the even tempo of life of the community, but citation of these words in the order of detention is more in the nature of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of

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preventing the petitioner from acting in a manner prejudicial to the maintenance of public order."

9. The above ratio laid down by the Apex Court in DARPAN KUMAR SHARMA @ DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU, referred supra, was subsequently followed by a Division Bench of this Court, in which one of us (P.D.DINAKARAN, J.) was a party, in MALA v. THE SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPARTMENT, GOVT. OF TAMIL NADU, CHENNAI, [(2004) M.L.J. (Crl.) 306].

10. Any disorderly behaviour of a person in the public or commission of a criminal offence is bound, to some extent, affect the peace prevailing in the locality and it may also affect law and order but the same need not affect maintenance of public order. As rightly pointed out by the learned counsel for the petitioner, in the instant case, the adverse cases relate to the offence punishable under Sections 457(ii), 380 read with 75, 380, 379 read with 75 IPC, whereas there is only one solitary instance, viz., the ground case, where the detenu had robbed in the public. In view of the decision in *R. Kalavathi v. State of T.N.,(2006) 6 SCC 14*, from one single transaction, though consisting of several acts, a habit cannot be attributed to a person, and the stand taken by the detaining authority that the detenu is habitually committing crime and acted in a manner prejudicial to the maintainable of public order cannot be sustained. Moreover, there is no material on record to show that the reach and potentiality of the single incident of robbery was so great as to disturb the even tempo or normal life of the community in the locality or disturb general peace and tranquillity or create a sense of alarm and insecurity in the locality. We are of the considered opinion that the ratio laid down in DARPAN KUMAR SHARMA's case, cited supra, squarely applies to the case on hand.

For the reasons aforesaid, the impugned order of detention suffers for non-application of mind and as such, the same is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The order of detention dated 5.7.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required connection with in any other crime. No costs.

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Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To:

1. The Secretary to Government
   State of Tamilnadu
   Prohibition and Excise XII Department
   Fort St.George, Chennai-9.

2. The District Magistrate
   and District Collector
   Tiruvannamalai District
   Tiruvannamalai.

3. The Superintendent,
   Central Prison, Vellore.

4. The Joint Secretary to Government,
   Public (Law and Order) Department
   Fort St. George, Chennai-9.

5. The Public Prosecutor,
   High Court, Madras.

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